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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 485

JAMES B. CAREY, AS PRESIDENT OF THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION,
Respondent

RESPONSE OF WESTINGHOUSE ELECTRIC CORPORATION TO SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Since the completion (on November 2, 1962) of the papers in this matter provided for by Rules 21, 23 and 24, Petitioner has filed a Memorandum (February 14, 1963) and a Supplemental Memorandum (March 20, 1963) in further support of his Petition.

The Memorandum calls the attention of this Court to (i) the motion to dismiss theretofor filed in this Court in No. 419 (October Term 1962—on petition for writ of certiorari) (hereinafter *"Raytheon"*); and (ii) this Court's own decision in *Smith* v. *Evening News Ass'n* (371 U. S. 195). (The motion, which was granted on March 18, 1963, was grounded on a settlement agreement among all the parties in *Raytheon* and David Cole, impartial umpire under the AFL-CIO *Internal Disputes Plan*, pursuant to which the two rival unions and the employer in that case are to arbitrate their differences in a manner binding on

all, the criteria resulting from such arbitration to be applicable to subsequent arbitrations and proceedings instituted under the AFL-CIO *Internal Disputes Plan.)*

The Supplemental Memorandum (i) calls the attention of this Court to the opinion of the Court of Appeals for the Second Circuit in *Carey* v. *General Electric Co.*, F. 2d . , (decided March 11, 1963) and (ii) after setting forth various arguments, urges this Court to grant the petition and simultaneously "reverse the court below without further briefs or argument, and avoid further postponement[*] of the arbitration of the grievances which gave rise to this action" (p. 4).

The disagreement of the Second Circuit in *General Electric* with the opinion of the Court of Appeals for the First Circuit in *Raytheon* (See note 12, p. 24, Appendix to Supplemental Memorandum), clearly does not require summary action in the instant case. This Court does not sit to reverse lower court decisions inconsistent with decisions of the Second Circuit, but to resolve conflicts among the decisions of the various lower courts. The weight of the lower court authority on the subject of the arbitrability of certification and representational grievances being *contra* to *General Electric*, the Second Circuit's decision does not make frivolous the position of the First Circuit in *Raytheon* or the position of the court below in the instant case. Indeed, in *Raytheon* the views of the Solicitor General were invited—a posture hardly suggestive of the propriety of summary disposition.

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*On the subject of *"postponement"*, Petitioner (i) postponed for one year and eight months the instituting of court action after Respondent had denied the arbitrability of the so-called Baltimore Grievance in the instant case (Rec., p. 71, f. 212), (ii) postponed for over one year the institution of court action after Respondent denied the arbitrability of the so-called East Pittsburgh Grievance in the instant case (Rec., p. 91, f. 273), and (iii) postponed for almost a full 90 days the filing of his Petition to this Court.

The Supplemental Memorandum seems to say that, because the Second Circuit construed Petitioner's contract with General Electric in respect of a particular grievance differently from the way in which the court below construed Petitioner's contract with Respondent in respect of the East Pittsburgh grievance (that involved in the second question posed by the Petition), summary action by this Court on that second question is appropriate. Suffice it to say that the contract and the grievance in the East Pittsburgh situation are different from those in the situation before the Second Circuit and, particularly, the exclusionary *proviso* to the arbitration clause in General Electric's contract is materially different than the exclusionary *proviso* in Respondent's contract (see first full paragraph, p. 15, Appendix to the Supplemental Memorandum) (and, of course, there are several other material differences in the respective contracts). In any event, particular judicial applications of particular arbitration clauses to particular grievances do not give rise to legal inconsistencies.

To the extent to which the Memorandum and the Supplemental Memorandum

> (a) urge that the legal issues relating to the arbitrability of a grievance involving certifications and representational matters are identical with those relating to the arbitrability of a grievance involving conduct which might also constitute an unfair labor practice,

the material differences between those two types of grievances have been thoroughly treated in the papers filed pursuant to the Rules; and

> (b) urge the relevance of *General Electric's* discussion of the arbitrability of grievances involving "work assignments."

the differences between a "work assignment" grievance (discussed in *General Electric*) and a "representation and certification" grievance (involved in the instant case) have also been set forth in the papers filed pursuant to the Rules.

Respectfully submitted,

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